

Tuesday, December 16, 2008

The Board met at its offices at 450 N Street, Sacramento, at 9:45 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

James F. Brown and Lynnae L. Brown, 423373

2000, \$32,849.00 Assessment

For Appellant:

James F. Brown, Taxpayer

For Franchise Tax Board:

Todd Watkins, Tax Counsel

Debra S. Peterson, Tax Counsel

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants' transfer of 40,000 shares of OpenTV, Inc. stock to Derivium Capital, LLC in three separate transactions in 2000 constituted a sale of those shares that resulted in taxable gain to appellants.

Whether the FTB properly applied the overpayment from 2003 against appellants' 2000 liability.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Ms. Mandel left the Boardroom and Mr. Chivaro entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Mr. Chivaro left the Boardroom.

Home Depot U.S.A., Inc., 298683

1999, \$1,092,991.00 Claim for Refund

For Appellant:

Jill Wood, Taxpayer

Carley A. Roberts, Attorney

Eric J. Coffill, Attorney

For Franchise Tax Board:

Carl Joseph, Tax Counsel

Norman Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent has shown that including in appellant's sales factor the gross receipts generated from the redemption of its marketable securities is distortive for purposes of Revenue and Taxation Code section 25137.

Whether respondent has shown that including only the net receipts generated from the redemption of those marketable securities is reasonable.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.1.)

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Mr. Chivaro absent, the Board submitted the appeal for decision.

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Mr. Leonard directed staff to analyze and compose a list of all the deferred cases for *Home Depot U.S.A, Inc.*, 298683 by the variety of factors that have been presented by *Home Depot U.S.A, Inc.*, 298683 today.

Exhibits to these minutes are incorporated by reference.

Ms. Mandel returned to the Boardroom on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Shalimar Lea Beach, 421276

1998, \$6,727.34 Claim for Refund

1999, \$3,192.48 Claim for Refund

2000, \$1,507.64 Claim for Refund

2001, \$1,091.89 Claim for Refund

For Appellant:

Shalimar Beach, Taxpayer

Jaclyn Appleby, Representative

For Franchise Tax Board:

Mary Yee, Tax Counsel

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant's claims for refund are barred by the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.2.)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 12:20 p.m. and reconvened at 1:35 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang present.

## **PROPERTY TAXES HEARING**

Sprint PCS (2720), 457703

2008, \$2,546,100,000.00 Unitary Value

For Petitioner:

Richard Wiley, Attorney

Peter Hladek, Representative

Andrew Davis, Representative

For Property and Special Taxes Department: Carole Ruwart, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has shown that the Replacement Cost New factors utilized in determining respondent State-Assessed Property Division's Replacement Cost New Less Depreciation value indicator were less reliable than petitioner's Replacement Cost New factors.

Whether petitioner has shown that the depreciation and obsolescence factors used in determining respondent's Replacement Cost New Less Depreciation value indicator were less reliable than petitioner's factors.

Whether respondent's Replacement Cost New Less Depreciation value indicator erroneously includes the cost of leased property owned by third party.

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Whether the value of petitioner's nontaxable intangible assets has been included in respondent's Replacement Cost New Less Depreciation value indicator.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Mr. Chiang voting yes, Ms. Steel voting no, the Board ordered that the value be reduce to \$2,039,700,000.

### **PROPERTY TAXES MATTERS, CONSENT**

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board made the following orders:

#### **Petitions for Reassessment of Private Railroad Car Tax**

INEOS Olefins & Polymers USA, LLC (5711), 465161

2008, \$1,432,870.00

Action: Granted the 2008 private railroad car tax petition for reassessment increasing its value to \$2,898,114.00 as recommended by staff.

Trinity Industries Leasing Company (5758), 465160

2008, \$53,212,275.00

Action: Granted the 2008 private railroad car tax petition for reassessment reducing its value to \$53,082,285.00 as recommended by staff.

Azteca Milling, LP (5754), 465150

2008, \$17,270.00

Action: Granted the 2008 private railroad car tax petition for reassessment reducing its value to \$6,168.00 as recommended by staff.

BP Corporation North America, Inc. (540), 465350

2008, \$1,436,574.00

Action: Granted the 2008 private railroad car tax petition for reassessment reducing its value to \$96,903.00 as recommended by staff.

Conagra Foods (MHC, Inc.) (5761), 465348

2008, \$744,171.00

Action: Granted the 2008 private railroad car tax petition for reassessment increasing its value to \$809,422.00 as recommended by staff.

#### **Timber Tax Yield Tax Claim for Refund**

Maribeth W. Collins, et al., #2, 468222

2008, \$90,817.92 Claim for Refund

Action: Approve the timber tax yield tax claim for refund as recommended by staff.

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**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND DENIAL OF CLAIM FOR REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties and Denial of Claim for Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, Ms. Steel not participating in *Conocophillips Company, 441890 (MT)* in accordance with Government Code section 87105, the Board made the following orders:

Life Insurance Company of North America, 463960 (ET)

4-1-08 to 6-30-08, \$144,583.50

Action: Approve the relief of penalty as recommended by staff.

Endurance Reinsurance Corporation of America, 465642 (ET)

7-1-08 to 9-30-08, \$154,058.80

Action: Approve the relief of penalty as recommended by staff.

Conocophillips Company, 441890 (MT)

1-1-07 to 12-31-07, \$2,148,977.44

Action: Approve the denial of claim for refund as recommended by staff. Ms. Steel not participating in accordance with Government Code section 87105.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board made the following orders:

Chevron USA, Inc., 464117 (MT)

6-1-08 to 6-30-08, \$189,496.37

Action: Approve the refund as recommended by staff.

CM Life Insurance Company, 457463 (ET)

1-1-07 to 12-31-07, \$63,663.91

Action: Approve the refund as recommended by staff.

Tower Insurance Company of New York, 461948 (ET)

1-1-07 to 12-31-07, \$74,748.58

Action: Approve the refund as recommended by staff.

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**LEGAL APPEALS PROPERTY TAXES MATTERS, ADJUDICATORY****Golden State Water Company (101), 457748**

2008, \$504,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Mr. Chiang voting no.

Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**San Diego Gas & Electric Company (141), 458198**

2008, \$4,451,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Verizon California, Inc. (201), 458200**

2008, \$3,920,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the value be reduce to \$3,595,900,000.

**Pacific Bell Telephone Company (279), 451533**

2008, \$7,436,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the value be reduce to \$6,900,600,000.

**Dynegy Moss Landing, LLC (1103), 458195**

2008, \$742,400,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

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**La Paloma Generating Company, LLC (1112), 457485**

2008, \$477,900,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Mountainview Power Company (1119), 458202**

2008, \$593,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Elk Hills Power, LLC (1126), 457487**

2008, \$306,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Leonard. No other disqualifying contributions were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard not participating in accordance with Government Code section 15626, Ms. Steel not participating in accordance with Government Code section 87105, the Board ordered that the petition be denied.

**Delta Energy Center, LLC (1128), 457473**

2008, \$438,400,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Pastoria Energy Center, LLC (1131), 457475**

2008, \$455,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Calpine Construction Finance Company, LP (1132), 457477**

2008, \$234,200,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Metcalf Energy Center (1133), 457478**

2008, \$319,200,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Reliant Energy Mandalay, LLC (1114), 457861**

2008, \$42,700,000.000 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

**Reliant Energy Ormond Beach, LLC (1115) 457862**

2008, \$84,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

**Reliant Energy Etiwanda, LLC (1116), 457863**

2008, \$41,000,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

**GWF Energy, LLC - Hanford (1122), 457976**

2008, \$59,900,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

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**GWF Energy, LLC - Henrietta (1123), 457990**

2008, \$61,000,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

**GWF Energy, LLC - Tracy (1124), 457997**

2008, \$93,800,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

**Qwest Communications Corporation (2463), 458009**

2008, \$172,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

**AT&T Mobility, LLC (2606), 451532**

2008, \$1,822,000,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the value be reduced to \$1,577,721,146.

**Level 3 Communications, LLC (7761), 458194**

2008, \$514,900,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the value be reduced to \$467,400,000.

**Pacific Pipeline System, LLC (486), 458193**

2008, \$176,300,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.



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Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, and Mr. Chiang voting yes, Ms. Steel not participating in accordance with Government Code section 87105, the Board ordered that the value be reduced to \$109,000,000.

**EAS Communication, Inc. (7859), 450872**

2008, \$59,100.00 Unitary Assessed Value, \$5,910.00 Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Intelsat Global Service Corporation (7969), 458199**

2008, \$21,400,000.00 Unitary Assessed Value, \$2,140,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Legent Communications Corporation (7978), 450873**

2008, \$40,300.00 Unitary Assessed Value, \$4,030.00 Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

**Utility Telephone, Inc. (7994), 450047**

2008, \$944,000.00 Unitary Assessed Value, \$94,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

The Board directed staff to identify and compile a past history of cases that have been granted relief from the 10 percent penalty imposed for petitioner's failure to timely file a property statement.

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**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

**PROPERTY TAX MATTERS**

**Unitary Land Escaped Assessments**

Sprint PCS (2720)

2005-2007, \$1,691,475.00 Value

Cricket Communications, Inc. (2762)

2007, \$428,531.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board adopted the unitary land escaped assessment as recommended by staff.

**Board Roll Changes**

2006, 2007 and 2008 State-Assessed Property Rolls

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board approved corrections to the 2006, 2007 and 2008 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 12.3).

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARING HELD DECEMBER 16, 2008**

Home Depot U.S.A., Inc., 298683

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Dr. Chu but failed to carry, Dr. Chu and Ms. Yee voting yes, Mr. Leonard, Ms. Steel and Mr. Chiang voting no.

Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, Dr. Chu and Ms. Yee voting no, the Board reversed the action of the Franchise Tax Board.

Ms. Yee directed staff to include in all further related cases an updated status of the relationship of prior decisions including today's decision on *Home Depot U.S.A., Inc.*, 298683.

Mr. Chiang left the Boardroom and Ms. Mandel entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Christine A. Baker, 441209  
2001, \$145.00 Claim for Refund

For Appellant:

For Franchise Tax Board:

Christine A. Baker, Taxpayer

Jenna Mayfield, Tax Counsel

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant's claim for refund is barred by the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.4.)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried,  
Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the  
appeal for decision.

Michael L. Cate, 441278  
2004, \$5,625.00 Assessment

For Appellant:

For Franchise Tax Board:

Michael L. Cate, Taxpayer

Lindy Marrington, Witness

Mark McEvilly, Tax Counsel

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated respondent erred in denying appellant's  
claim for refund.

Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.5.)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried,  
Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the  
appeal for decision.

**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Cindy A. Saito*,  
339713 (KH).

With respect to the Legal Appeals Matters Consent Agenda, upon a single  
motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee,  
Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Sierra Textile Company, LP, 301401 (EH)

10-1-01 to 12-31-03, \$33,655.31 Tax, \$1,770.47 Amnesty Interest Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Robere's Jewelry, Inc., 220461 (FH)

7-1-98 to 3-31-02, \$79,461.04 Tax, \$12,230.76 Negligence Penalty, \$24,973.53 Amnesty Interest  
Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

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Joginder Lal, 340507 (KH)

7-1-01 to 6-30-04, \$2,954.79 Tax, \$0.00 Penalty, \$245.41 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Carl Joseph Kennedy III, 349941 (KH)

10-1-00 to 12-31-00, \$11,104.00, \$4,344.43 Penalties

Action: Redetermine as recommended by the Appeals Division.

Michael D. Sanders, 295375 (KH)

Sally A. Sanders, 295376 (KH)

10-1-99 to 6-30-02, \$14,992.96 Tax, \$1,590.11 Failure to Timely Pay Penalty, \$1,775.20

Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Cindy A. Saito, 339713 (KH)

1-1-01 to 6-30-01, \$17,461.45 Tax, \$2,204.90 Late Payment Penalty, \$2,929.93 Amnesty Interest Penalty

Action: The Board took no action.

The Kordahl Trust Dated 02/22/92, 359922 (UT)

11-18-02, \$1,234.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Touch 99 Corporation, 301273, (BH)

7-1-00 to 6-30-03, \$5,725.59 Tax, \$5,759.70 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

## **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Personal Selling Power, Inc.*, 380557.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Jose R. Angeles, 400667

2005, \$373.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jeanine M. Artmont, 406115

2003, \$1,386.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Marco A. Cerda, 358728

2004, \$687.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Drew E. Collins and Linda G. Collins, 406111

2003, \$18,138.68 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Patricia C. Fleming, 401328

2005, \$1,361.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Manley A. Golson, 437522

2002, \$385.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

James Griffen and Patricia Griffen, 379667

2003, \$359.15 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

Roger A. Grubic and Janice F. Grubic, 380418

2005, \$3,909.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jack D. Lawrence, Jr., 404660

1998, \$3,959.69 Claim for Refund

1999, \$4,357.14 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

K. Linda Lawrence, 401347

2005, \$974 Assessment

Action: Sustain the action of the Franchise Tax Board.

Personal Selling Power, Inc., 380557

2003, \$800.00 Tax, \$108.05 Penalties

Action: The Board took no action.

Roger O. Schafer and Frances F. Schafer, 398947

2005, \$4,572.57 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Laura J. Tennison, 402863

2003, \$846.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Carlos M. Alcala and Norma Alcala, 259159  
1995, \$11,416.00 Tax, \$2,854.00 Late Filing Penalty  
Action: Deny the petition for rehearing.

William Amonette Anderson, 397348  
2004, \$3,333.00 Tax, \$833.25 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty  
Action: Deny the petition for rehearing.

Greg Galaski, 383410  
2002, \$1,342.00 Tax, \$335.50 Late Filing Penalty, \$81.31 Post Amnesty Penalty, \$2,000.00  
Frivolous Appeal Penalty  
Action: Deny the petition for rehearing.

Bryon Hoffman, 381469  
2004, \$5,798.00 Tax, \$2,899.00 Penalties, \$2,500.00 Frivolous Appeal Penalty  
Action: Deny the petition for rehearing.

Shawn Mills, 402021  
2001, \$8,151.00 Tax, \$2,039.00 Late Filing Penalty, \$852.28 Post-Amnesty Penalty, \$750.00  
Frivolous Appeal Penalty  
Action: Deny the petition for rehearing.

Charles H. Bond, 421271  
2005, \$3,553.00 Tax, \$888.25 Late Filing Penalty, \$1,291.00 Notice and Demand Penalty  
Action: Sustain the modified action of the Franchise Tax Board and impose a \$1,500.00  
frivolous appeal penalty.

Thao Nguyen and Phucy Nguyen, 360304  
1997, \$14,220.00 Tax, \$2,844.00 Accuracy Related Penalty  
Action: Sustain the action of the Franchise Tax Board.

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John H. Vories, 389158

1992, \$2,007.45 Claim for Refund

1993, \$4,234.20 Claim for Refund

1994, \$1,874.55 Claim for Refund

1995, \$7,087.83 Claim for Refund

1996, \$7,073.83 Claim for Refund

1997, \$158.83 Claim for Refund

1998, \$158.83 Claim for Refund

1999, \$158.83 Claim for Refund

2000, \$292.32 Claim for Refund

2001, \$416.94 Claim for Refund

2002, \$416.94 Claim for Refund

2003, \$327.18 Claim for Refund

2004, \$613.03 Claim for Refund

2005, \$2,389.40 Claim for Refund

Action: Sustain the modified action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Gregg Shanberg, 402904

2004, \$105,000.00 Claim for Refund

Action: Dismiss the appeal due to lack of jurisdiction.

Alexander Kazerani, 342393

1999, \$43,797.00 Claim for Refund

Action: Dismiss the appeal due to lack of jurisdiction.

David L. Lee and Ellen W. Lee, 345434

1999, \$939,408.00 Claim for Refund

2000, \$182,396.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Charlotte Agcaoili, 400309

2006, \$312.50

Action: Sustain the action of the Franchise Tax Board.

Gloria Anderson, 431962

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Odette Baladi (Deceased), 389577

2006, \$472.60

Action: Sustain the action of the Franchise Tax Board.

Jeanne Cervantes, 431542

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Francisco M. Curiel, 422996

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Charles Warren Esler, 380523

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Kadedra Monique Fowler, 397208

2006, \$347.50

Action: Modify the action of the Franchise Tax Board.

Roy A. Harrington, 400305

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Michael S. Jewett, 422819

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Shonna Krogh, 386513

2006, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Marie Patton, 382020

2006 \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Hubert O. Ross, 401187

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

James Royer Segovia, 394603

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.



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**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

Ms. Mandel stated that Mr. Chiang would not participate in the matter of *Wells Fargo Bank, 424234 (BH)*.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Wells Fargo Bank, 424234 (BH)*, and in accordance with Government Code section 87105 not participating in *Best Buy Store, LP, 436923 (OH)*, the Board made the following orders:

Los Angeles Department of Water and Power, 354588 (AA)

1-1-00 to 12-31-02, \$216,606.23

Action: Approve the redetermination as recommended by staff.

The Merchant of Tennis, Inc., 293594 (AS)

4-1-00 to 12-31-02, \$74,763.13

Action: Approve the redetermination as recommended by staff.

Aixtron, Inc., 342572 (GH)

4-1-01 to 3-31-03, \$658,908.15

Action: Approve the redetermination as recommended by staff.

Fry's Electronics, Inc., 361957 (GH)

10-1-01 to 9-30-04, \$869,486.25

Action: Approve the redetermination as recommended by staff.

Gulfstream Aerospace Corporation, 332200 (OH)

7-1-99 to 6-30-03, \$15,347,816.20

Action: Approve the redetermination as recommended by staff.

Los Angeles Department of Water and Power, 353893 (AA)

1-1-00 to 12-31-02, \$404,228.11

Action: Approve the redetermination as recommended by staff.

Masimo Corporation, 378525 (EA)

7-1-01 to 6-30-04, \$87,478.46

Action: Approve the redetermination as recommended by staff.

Gateway 2000 Major Accounts, Inc., 333468 (OH)

7-1-98 to 12-31-98, \$57,544.21

Action: Approve the redetermination as recommended by staff.

Tuesday, December 16, 2008

OCB, LLC, 423343 (EA)

7-1-03 to 6-30-06, \$905,780.44

Action: Approve the redetermination as recommended by staff.

Henry E. Solowiej, 379793 (EA)

7-1-97 to 6-30-05, \$36,557.06

Action: Approve the redetermination as recommended by staff.

Stock Building Supply West, Inc., 465210 (OH)

5-1-08 to 6-15-08, \$126,470.28

Action: Approve the relief of penalty as recommended by staff.

Raley's, 465314 (JH)

4-6-08 to 6-28-08, \$205,094.59

Action: Approve the relief of penalty as recommended by staff.

S. B. Restaurant Co., 464385 (AA)

4-28-08 to 6-9-08, \$69,673.50

Action: Approve the relief of penalty as recommended by staff.

Wells Fargo Bank, 424234 (BH)

7-1-06 to 3-31-07, \$87,335.00

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating.

Diageo North America, Inc., 356849 (OH)

1-1-03 to 12-31-05, \$437,916.00

Action: Approve the denial of claim for refund as recommended by staff.

Thiel Structural Steel, Inc., 318432 (KH)

10-1-00 to 12-31-03, \$94,331.56

Action: Approve the denial of claim for refund as recommended by staff.

San Gabriel Insulation, Inc., 402679 (AP)

4-1-04 to 6-30-07, \$56,773.00

Action: Approve the denial of claim for refund as recommended by staff.

Best Buy Store, LP, 436923 (OH)

1-1-03 to 12-31-07, \$11,800,000.00

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Capital One Auto Finance, Inc., 296983 (OH)

1-1-03 to 3-31-05, \$349,354.37

Action: Approve the denial of claim for refund as recommended by staff.

Tuesday, December 16, 2008

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

The Board deferred consideration of the following matter: *UPS Oasis Supply Corporation, 340492 (OH)*.

Ms. Mandel stated that Mr. Chiang would not participate in the matter of *Exxon Mobil Corporation, 234706 (OH)*.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Exxon Mobil Corporation, 234706 (OH)*, and in accordance with Government Code section 87105 not participating in *Arco Material Supply Company, 440264 (AS)*, the Board made the following orders:

PC Mall Sales, Inc., 405670 (AS)

7-1-01 to 6-30-04, \$1,932,642.35

Action: Approve the credit and cancellation as recommended by staff.

Aixtron, Inc., 465799 (GH)

4-1-01 to 3-31-04, \$61,199.70

Action: Approve the credit and cancellation as recommended by staff.

Aptix Corporation, 293456 (GH)

7-1-99 to 4-22-04, \$312,420.13

Action: Approve the credit and cancellation as recommended by staff.

Evans Communications, 465351 (KH)

4-1-07 to 9-30-07, \$66,504.38

Action: Approve the credit and cancellation as recommended by staff.

DSW Shoe Warehouse, Inc., 465507 (OH)

7-1-04 to 6-30-05, \$95,249.88

Action: Approve the credit and cancellation as recommended by staff.

Rajmp, Inc., 463856 (FH)

1-1-07 to 5-27-07, \$112,369.15

Action: Approve the credit and cancellation as recommended by staff.

Lexington Acquisition, Inc., 435022 (AC)

7-1-03 to 6-30-06, \$134,110.21

Action: Approve the credit and cancellation as recommended by staff.

**Tuesday, December 16, 2008**

Bonnie Lee Kehoe, 465496 (KH)

1-11-06 to 12-31-06, \$72,079.50

Action: Approve the credit and cancellation as recommended by staff.

Ascent Media Creative Services, Inc., 464413 (BH)

6-28-99 to 6-30-02, \$308,682.42

Action: Approve the refund as recommended by staff.

Sourcecorp BPS Southern California, Inc., 331812 (OH)

7-1-02 to 9-30-05, \$235,998.08

Action: Approve the refund as recommended by staff.

Arco Material Supply Company, 440264 (AS)

1-1-03 to 12-31-06, \$138,204.71

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Chevron U.S.A., Inc., 464364 (BH)

4-1-03 to 12-31-07, \$276,546.31

Action: Approve the refund as recommended by staff.

PC Mall Sales, Inc., 465205 (AS)

7-1-01 to 6-30-04, \$124,484.70

Action: Approve the refund as recommended by staff.

Palm Springs Motor, Inc., 433713 (EH)

1-1-06 to 9-30-07, \$104,528.03

Action: Approve the refund as recommended by staff.

Acushnet Company, 424506 (OH)

7-1-04 to 9-30-05, \$255,680.67

Action: Approve the refund as recommended by staff.

North Island Financial Credit Union, 417198 (FH)

7-1-04 to 12-31-07, \$217,170.52

Action: Approve the refund as recommended by staff.

National Semiconductor Corporation, 317036 (GH)

6-25-01 to 12-26-04, \$419,315.93

Action: Approve the refund as recommended by staff.

Intevac, Inc., 437742 (GH)

7-1-07 to 9-30-07, \$762,325.40

Action: Approve the refund as recommended by staff.

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Maxtor Corporation, 462979 (GH)

1-1-05 to 3-11-07, \$156,485.18

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 460242 (KH)

4-1-08 to 6-30-08, \$382,707.80

Action: Approve the refund as recommended by staff.

Exxon Mobil Corporation, 234706 (OH)

4-1-00 to 6-30-00, \$1,004,019.27

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Bloomberg, LP, 388172 (OH)

4-1-02 to 9-30-03, \$141,151.93

Action: Approve the refund as recommended by staff.

Color Control, Inc., 360146 (OH)

4-1-03 to 12-31-05, \$129,810.11

Action: Approve the refund as recommended by staff.

Opex Corporation, 465613 (OH)

10-1-04 to 9-30-07, \$110,061.87

Action: Approve the refund as recommended by staff.

Zenith Insurance Company, 351533 (AC)

1-1-03 to 12-31-06, \$632,179.41

Action: Approve the refund as recommended by staff.

Chevron Credit Bank, National Association, 447146 (CH)

1-1-00 to 9-30-01, \$824,809.34

Action: Approve the refund as recommended by staff.

UPS Oasis Supply Corporation, 340492 (OH)

10-1-01 to 3-31-07, \$3,428,057.20

Action: The Board took no action.

Covad Communications Company, 390374 (GH)

4-1-06 to 12-31-06, \$108,574.72

Action: Approve the refund as recommended by staff.

Banana Republic (California), LLC, 351407 (BH)

1-1-03 to 1-31-04, \$398,498.58

Action: Approve the refund as recommended by staff.

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Old Navy (California), LLC, 351348 (BH)

1-1-03 to 1-31-04, \$65,637.55

Action: Approve the refund as recommended by staff.

Taylor Made Golf Company, Inc., 462276 (FH)

1-1-05 to 3-31-07, \$208,363.42

Action: Approve the refund as recommended by staff.

Village Nurseries Wholesale, LLC, 464334 (EA)

10-1-03 to 9-30-06, \$116,641.19

Action: Approve the refund as recommended by staff.

Cardinal Health 415, Inc., 266959 (AC)

4-1-01 to 3-31-04, \$65,122.11

Action: Approve the refund as recommended by staff.

Frank Kofsuske, 272134 (BH)

4-1-01 to 3-31-04, \$82,238.82

Action: Approve the refund as recommended by staff.

Hold Everything, Inc., 465637 (BH)

7-1-06 to 9-30-06, \$116,646.98

Action: Approve the refund as recommended by staff.

World Wide Parts & Accessories Corp., 420190 (CH)

10-1-04 to 12-31-06, \$150,106.86

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 460973 (AP)

4-1-08 to 6-30-08, \$77,655.88

Action: Approve the refund as recommended by staff.

Philips Semiconductors, Inc., 465636 (GH)

1-1-96 to 12-31-99, \$53,317.96

Action: Approve the refund as recommended by staff.

SCE Federal Credit Union, 349664 (AP)

1-1-03 to 12-31-06, \$158,404.01

Action: Approve the refund as recommended by staff.

Comprehensive Diagnostic Imaging, 263731 (AC)

4-1-01 to 3-31-04, \$112,189.20

Action: Approve the refund as recommended by staff.

Tuesday, December 16, 2008

Capital One Auto Finance, Inc., 296983 (OH)

1-1-03 to 3-31-05, \$2,966,160.78

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 460248 (EA)

4-1-08 to 6-30-08, \$184,351.95

Action: Approve the refund as recommended by staff.

K.D.M. Enterprises, 426881 (EH)

10-1-04 to 3-31-08, \$111,445.81

Action: Approve the refund as recommended by staff.

Wesco Tool &amp; Equipment Rental, LLC, 394307 (AS)

8-1-04 to 6-30-07, \$77,072.16

Action: Approve the refund as recommended by staff.

Dentsply Prosthetics U. S., LLC 417199 (OH)

10-1-02 to 9-30-05, \$120,425.01

Action: Approve the refund as recommended by staff.

Kern Schools Federal Credit Union, 451301 (AR)

7-1-05 to 12-31-05, \$51,635.20

Action: Approve the refund as recommended by staff.

Chevron Credit Bank, National Association, 447147 (CH)

10-1-04 to 12-07-07, \$2,139,129.87

Action: Approve the refund as recommended by staff.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Trung Duc Trinh and Shelly C. Yun-Trinh, 330253 (AS)

4-1-02 to 12-31-02, \$0.00 Tax, \$972.66 Negligence Penalty

Shaya Beverly Center, Inc., 330254 (AS)

1-1-02 to 6-30-03, \$8,342.78 Tax, \$2,741.83 Negligence Penalty

Considered by the Board: August 6, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ibrahim D. Ibrahim and Sahar Ibrahim, 310288 (EH)

7-1-01 to 3-31-04, \$14,610.42 Tax, \$0.00 Penalty

Considered by the Board: August 5, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, December 16, 2008

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Cities of Los Angeles and San Jose, 352192

4-1-01 to 12-31-06, \$74,232.00 Tax for each City

Considered by the Board: October 11, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Speakers: Steve Conway, Director of Finance, Town of Los Gatos  
Al Koch, Special Tax Counsel, Muni Services  
Linda Lowry, City Manager, City of Pomona  
Willie Norfleet, City Controller, City of Compton  
Arnold Alvarez-Glassman, City Attorney, City of Pomona  
Fran Mancia, Director of Government Relations, Muni Services  
Robert Cendejas, Tax Attorney, Muni Services

Cities of Torrance and Los Angeles, 469251

3-27-92 and 6-30-92, \$4,927,804.00 Tax

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged on December 17, 2008.)

Cities of South San Francisco and Los Angeles, 469250

3-27-96, \$1,461,817.00 Tax

3-27-96, \$1,387,296.00 Tax

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged on December 17, 2008.)

County of Los Angeles, 469243

12-24-98, \$153,488.00 Tax

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged on December 17, 2008.)

Cities of Pomona and Los Gatos, 469261

6-17-94, \$9,340,284.00 Tax

9-28-94, \$152,471.00 Tax

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged on December 17, 2008.)



Tuesday, December 16, 2008

City of Compton, 469256

12-21-95, Unknown Amount

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged on December 17, 2008.)

City of Union City, 469296

3-27-96, \$30,400.00 Tax

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: (Motion expunged on December 17, 2008.)

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

John P. Fields and N. Carol Fields, 361390

1996, \$2,706.00 Claim for Refund

Considered by the Board: July 8, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Pete Hernandez, 378089

2002, \$1,799.00 Tax, \$69.33 Post-Amnesty Penalty

2003, \$1,606.00 Tax

Considered by the Board: February 28, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board.

Kenneth Banks, 327922

1995, \$276,096.00 Assessment

Considered by the Board: April 8, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Yee moved that the petition for rehearing be denied. The motion was seconded by Ms. Mandel but no vote was taken.

Mr. Leonard made a substitute motion to grant the petition for rehearing. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee, and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition for rehearing be denied.

Tuesday, December 16, 2008

John Cirino and Sepideh Cirino, 361476

2001, \$45,078.00 Tax

Considered by the Board: June 19, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board took no action.

Swift Transportation Company, Inc. and Swift Transportation Corporation, 266318

1997, \$55,352.00 Assessment

1998, \$118,067.00 Assessment

Considered by the Board: February 1, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board adopted a decision granting the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,  
ADJUDICATORY**

Allan Walden, 383500

2004, \$347.50

2005, \$347.50

Considered by the Board: August 5, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
ADJUDICATORY**

Infinity Material Management Solutions, 379564 (GH)

1-1-01 to 12-31-02, \$99,606.48

Considered by the Board: March 20, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

Gottschalks, Inc., 441170 (KH)

7-6-03 to 7-7-07, \$426,590.81

Considered by the Board: August 19, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Tuesday, December 16, 2008

The Mercury Trust, 374580 (UT)

2-26-04 to 2-26-04, \$57,636.86

Considered by the Board: July 8, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

#### **OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Herman Mendel* as recommended by staff.

#### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD DECEMBER 16, 2008**

James F. Brown and Lynnae L. Brown, 423373

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

#### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Byron S. Georgiou, 435061

1997, \$31,808.67 Claim for Refund

For Appellant:

Appearance Waived

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that his claim for refund for tax year 1997 was filed within the applicable statute of limitations.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating, the Board sustained the action of the Franchise Tax Board.

#### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD DECEMBER 16, 2008**

Shalimar Lea Beach, 421276

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

**Tuesday, December 16, 2008**

Christine A. Baker, 441209

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Michael L. Cate, 441278

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

The Board adjourned at 4:05 p.m.

*The foregoing minutes are adopted by the Board on March 17, 2009.*

Note: The following matter was removed from the calendar prior to the meeting: *Danny Kangsok Kim, 386898 (EA)*.